IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

CRP.No. 394 of 2005(F)

AS.193/2003 of V ADDL. DISTRICT COURT, ERNAKULAM
OS.921/2001 of PRL.M.C.,ERNAKULAM

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REVN. PETITIONERS: APPELLANTS/DEFENDANTS

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1. THE PRINCIPAL, AL-AMEEN PUBLIC SCHOOL, EDAPPALLY, ERNAKAULAM.

2. THE SECRETARY, AL-AMEEN EDUCATIONAL TRUST, EDAPPALLY, ERNAKULAM.

BY ADV. SRI.TPM.IBRAHIM KHAN
SRI.JOHN NUMPELI (JUNIOR)

RESPONDENT: RESPONDENT/PLAINTIFF

NIYAD K.A.(MINOR),
S/O.K.A.ABDUL MAJEED, REP. BY HIS FATHER AND GUARDIAN SHRI K.A.ABDUL MAJEED,
KOLLAMPARAMBIL HOUSE, VENNALA P.O.,
ERNAKULAM, KOCHI.

BY ADV. SRI.M.P.VIJAYAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

HARUN-UL-RASHID, J.

C.R.P.No.394 of 2005

Dated: SEPTEMBER 28, 2007

ORDER

The defendants are the revision petitioners. This revision is filed against the judgment and decree dated 28.10.2004 in A.S.No.193/2003 on the file of the Vth Additional District Court, Ernakulam. The respondent as plaintiff filed O.S.No.921/2001 before the Principal Munsiff, Ernakulam, for realisation of Rs.14,015/- together with interest from the date of suit till realisation from the defendants and their assets.

2. The facts of the case are that the plaintiff, for the purpose of getting admission to standard 11 in the defendants' school, paid Rs.10,000/- as donation and Rs.4015/- as tuition fee on 22.6.2000. On the next day the plaintiff got admission in a Polytechnic at Mangalore. Therefore, the plaintiff requested the defendants to return the certificates and the amount paid. Since the amount was not repaid, the suit was filed for the above said reliefs.

3. The petitioners/defendants contended inter alia that the amount of tuition fee received from the plaintiff is in accordance with the school rules and that they have not received any donation for admission as alleged by the plaintiff and that once donation is made to the charitable trust, it can never be refunded and the donation is exempted from the purview of the income-tax.

4. The trial court on an appreciation of the evidence on record held that the evidence and circumstances would clearly show that a sum of Rs.10,000/-

was paid by the plaintiff through PW.1 for securing admission to the 11th standard and also paid the tuition fee. Therefore, the trial court held that the defendants are liable to refund the total amount of Rs.14,015/- covered by Exts.A1 and A2 receipts to the plaintiff. Accordingly the suit was decreed with costs allowing the plaintiff to realise Rs.14,015/- together with interest at 6% per annum from the date of the suit till realisation from the defendants and their assets.

5. In appeal by the defendants the lower appellate court also examined the oral and documentary evidence adduced by both sides and confirmed the decree and judgment passed by the trial court. The appellate court also found that the amount sought to be realised was paid to the school authorities and that they have no right to retain the said amount and therefore the plaintiff is entitled to realise the decree amount with interest. In the light of the detailed discussion, the appellate court confirmed the decree granted by the trial court for return of the amount.

6. The findings entered by the courts below on the issues between the parties is on the basis of the evidence, both oral and documentary, adduced by both sides. The findings entered by the courts below are findings on facts on the question whether the plaintiff is entitled to realise the amount from the defendant as prayed for in the suit. Both the courts below concurrently found that the plaint claim is sustainable for the reasons elaborately discussed in both the judgments. I find no reason to interfere with the concurrent findings on facts

entered by the courts below. The impugned judgment and decree suffers from no illegality or irregularity. Hence the CRP does not deserve any consideration and therefore dismissed with costs.

HARUN-UL-RASHID
JUDGE

mt/-